

1 Robert A. Weikert (Bar No. 121146)  
[rweikert@nixonpeabody.com](mailto:rweikert@nixonpeabody.com)  
2 Dawn N. Valentine (Bar No. 206486)  
[dvalentine@nixonpeabody.com](mailto:dvalentine@nixonpeabody.com)  
3 NIXON PEABODY LLP  
One Embarcadero Center  
4 San Francisco, California 94111-3600  
Tel: (415) 984-8200  
5 Fax: (415) 984-8300

6 David L. May (appearance *pro hac vice*)  
[dmay@nixonpeabody.com](mailto:dmay@nixonpeabody.com)

7 Jennette E. Wiser (appearance *pro hac vice*)  
[jwiser@nixonpeabody.com](mailto:jwiser@nixonpeabody.com)

NIXON PEABODY LLP  
799 9th Street NW  
Washington, DC 20001-4501  
Tel: (202) 585-8000  
Fax: (202) 585-8080

11 Jason T. Kunze (appearance *pro hac vice*)  
[jkunze@nixonpeabody.com](mailto:jkunze@nixonpeabody.com)

12           NIXON PEABODY LLP  
13           70 West Madison Street, 35<sup>th</sup> Floor  
14           Chicago, IL 60602  
15           Tel: (312) 977-4400  
16           Fax: (312) 977-4405

15 | Attorneys for Stardock Systems, Inc.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

20 | STARDOCK SYSTEMS, INC..

Case No.: 17-cv-07025-SBA

21 Plaintiff/Counter-Defendant.

**PLAINTIFF AND COUNTER-DEFENDANT  
STARDOCK SYSTEMS, INC.'S ANSWER  
AND AFFIRMATIVE DEFENSES TO  
DEFENDANTS' AND COUNTER-  
CLAIMANTS' SECOND AMENDED  
COUNTERCLAIM**

23 PAUL REICHE III and ROBERT FREDERICK FORD

## Defendants/Counter-Claimants.

## AND RELATED COUNTERCLAIM

CASE NO. 4:17-CV-07025-SBA

**PLAINTIFF AND COUNTER-DEFENDANT'S ANSWER AND AFFIRMATIVE  
DEFENSES TO DEFENDANTS' AND COUNTER-CLAIMANTS' SECOND AMENDED COUNTERCLAIM**

1 Plaintiff and Counter-Defendant Stardock Systems, Inc. (“Stardock”), by and through its  
 2 counsel, responds as follows to Defendants and Counter-Claimants Paul Reiche III’s (“Reiche”)  
 3 and Robert Frederick Ford’s (“Ford”) (collectively, “Defendants”) Second Amended Counterclaim.

4 **INTRODUCTION**

5 1. Stardock denies Defendants’ allegation that Stardock is infringing on their alleged  
 6 copyrights to the games or engaging in any form of unfair competition. Stardock further denies  
 7 Defendants’ allegation that they have the exclusive rights to make derivative works from the Star  
 8 Control and Star Control II games. Stardock lacks knowledge or information sufficient to form a  
 9 belief about the truth of any and all other allegations asserted in Paragraph 1 of the Second  
 10 Amended Counterclaim, and on that basis denies the allegations.

12 2. Stardock lacks knowledge or information sufficient to form a belief about the truth  
 13 of any and all allegations asserted in Paragraph 2 of the Second Amended Counterclaim, and on  
 14 that basis denies the allegations.

16 3. Stardock admits that, at the very least, it acquired the rights and registration for the  
 17 STAR CONTROL trademark (U.S. Trademark Registration No. 2,046,036) and the Star Control 3  
 18 copyright (U.S. Copyright Registration No. PA 799-000) from Atari in 2013. Except as expressly  
 19 admitted herein, Stardock denies any and all other allegations asserted in Paragraph 3 of the Second  
 20 Amended Counterclaim.

21 4. Stardock denies the allegations asserted in Paragraph 4 of the Second Amended  
 22 Counterclaim.

24 5. Stardock admits that in or around fall of 2017, it began selling Star Control I and  
 25 Star Control II on its own website and on Valve Corporation’s (“Valve”) website, [www.steam.com](http://www.steam.com).  
 26 Stardock also admits that in or around the fall of 2017, it began selling beta versions of limited  
 27 features of the Star Control: Origins game and on September 20, 2018, began publically selling

Star Control: Origins. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations relating to Counter-Defendants GOG Limited and GOG Poland sp. z.o.o. (collectively, “GOG”) and Valve asserted in Paragraph 5 of the Second Amended Counterclaim, and on that basis denies the allegations. Except as expressly admitted herein, Stardock denies any and all other allegations asserted in Paragraph 5 of the Second Amended Counterclaim.

6. Stardock admits that it has attempted to resolve this matter informally with Defendants and decided to file this suit as a result of the parties being unable to reach an agreement. Except as expressly admitted herein, Stardock denies any and all other allegations asserted in Paragraph 6 of the Second Amended Counterclaim.

## PARTIES

7. Stardock admits the allegations in Paragraph 7 of the Second Amended Counterclaim.

8. Stardock admits the allegations in Paragraph 8 of the Second Amended Counterclaim.

9. Stardock admits that it is a Michigan corporation with a principal place of business in Plymouth, Michigan and formerly had a location in Sunnyvale, California. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 9 of the Second Amended Counterclaim, and on that basis denies the allegations.

10. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 10 of the Second Amended Counterclaim, and on that basis denies the allegations.

11. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 11 of the Second Amended Counterclaim, and on that basis denies the allegations.

## **JURISDICTION AND VENUE**

12. Stardock admits the allegations in Paragraph 12 of the Second Amended Counterclaim.

13. Stardock admits the allegations in Paragraph 13 of the Second Amended Counterclaim, but denies that it engaged in any wrongdoing or unlawful conduct.

14. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 14 of the Second Amended Counterclaim, and on that basis denies the allegations.

15. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 15 of the Second Amended Counterclaim, and on that basis denies the allegations.

16. Stardock denies the allegations in Paragraph 16 to the extent they pertain to  
Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations  
in Paragraph 16 of the Second Amended Counterclaim and denies them on that basis.

17. Stardock admits the allegations in Paragraph 17 of the Second Amended Counterclaim but denies that it engaged in any wrongdoing or unlawful conduct.

## **INTRADISTRICT ASSIGNMENT**

18. Stardock admits the allegations in Paragraph 18 of the Second Amended Counterclaim, but denies that it engaged in any wrongdoing or unlawful conduct.

## **FACTUAL BACKGROUND**

*Reiche and Ford's Creation and Development of Star Control and Star Control II*

19. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 19 of the Second Amended Counterclaim, and on that basis denies the allegations.

20. Stardock admits that Accolade and Reiche entered into a License Agreement with an effective date of October 7, 1988, although Stardock denies that Reiche owned the rights that he purported to license pursuant to the 1988 Agreement. Stardock also admits that the 1988 License Agreement is shown in Exhibit 1 to the Second Amended Counterclaim and reflects the terms set forth in the agreement. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 20 of the Second Amended Counterclaim, and on that basis denies the allegations.

21. Stardock asserts that the language of the 1988 License Agreement is set forth in Exhibit 1 to the Second Amended Counterclaim. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 21 of the Second Amended Counterclaim, including Defendants' interpretation and construction of the agreement.

22. Stardock asserts that the language of the 1988 License Agreement is set forth in Exhibit 1 to the Second Amended Counterclaim. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 22 of the Second Amended Counterclaim, including Defendants' interpretation and construction of the agreement.

23. Stardock asserts that the language of the 1988 License Agreement is set forth in Exhibit 1 to the Second Amended Counterclaim. Except as expressly admitted herein, Stardock denies any and all other allegations of Paragraph 23 of the Second Amended Counterclaim.

1 including Defendants' interpretation and construction of the agreement.

2       24. Stardock asserts that the language of the 1988 License Agreement is set forth in  
3 Exhibit 1 to the Second Amended Counterclaim. Except as expressly admitted herein, Stardock  
4 denies any and all other allegations in Paragraph 24 of the Second Amended Counterclaim,  
5 including Defendants' interpretation and construction of the agreement.  
6

7       25. Stardock asserts that the language of the 1988 License Agreement is set forth in  
8 Exhibit 1 to the Second Amended Counterclaim. Except as expressly admitted herein, Stardock  
9 denies any and all other allegations in Paragraph 25 of the Second Amended Counterclaim,  
10 including Defendants' interpretation and construction of the agreement.  
11

12       26. Stardock asserts that the language of the 1988 License Agreement is set forth in  
13 Exhibit 1 to the Second Amended Counterclaim. Except as expressly admitted herein, Stardock  
14 denies any and all other allegations in Paragraph 26 of the Second Amended Counterclaim,  
15 including Defendants' interpretation and construction of the agreement.  
16

17       27. Stardock lacks knowledge or information sufficient to form a belief about the truth  
18 of any and all allegations asserted in Paragraph 27 of the Second Amended Counterclaim, and on  
19 that basis denies the allegations.  
20

21       28. Stardock lacks knowledge or information sufficient to form a belief about the truth  
22 of any and all allegations asserted in Paragraph 28 of the Second Amended Counterclaim, and on  
23 that basis denies the allegations.  
24

25       29. Stardock admits that other individuals were involved in the development and  
26 creation of Star Control I and Star Control II. Stardock lacks knowledge or information sufficient  
27 to form a belief about the truth of any and all other allegations asserted in Paragraph 29 of the  
28 Second Amended Counterclaim, and on that basis denies the allegations.  
29

30. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 30 of the Second Amended Counterclaim, and on that basis denies the allegations.

31. Stardock admits that Star Control I and Star Control II have become popular over the last couple of decades in the video game community. Stardock also admits that the following link contains the content associated with it: <https://kotaku.com/the-game-that-won-our-classic-pc-games-list-if-it-ha-1349952997>. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 31 of the Second Amended Counterclaim, and on that basis denies the allegations.

32. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 32 of the Second Amended Counterclaim, and on that basis denies the allegations.

33. Stardock admits that Exhibit 2 to the Second Amended Counterclaim shows an unsigned document titled “Addendum No. 1 to License Agreement Between Accolade, Inc. and Paul Reiche III”. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 33 of the Second Amended Counterclaim, and on that basis denies the allegations.

## ***Star Control 3 and 4 and Expiration of the 1988 License Agreement***

34. Stardock admits that Exhibit 3 to the Second Amended Counterclaim shows a document titled “Addendum No. 2 to License Agreement Between Accolade, Inc. and Paul Reiche III”. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 34 of the Second Amended Counterclaim, and on that basis denies the allegations.

35. Stardock admits that Defendants' Second Amended Counterclaim defines the "Classic Star Control Games" as Star Control, Star Control II, and Star Control III, collectively.

36. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 36 of the Second Amended Counterclaim, and on that basis denies the allegations.

37. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 37 of the Second Amended Counterclaim, and on that basis denies the allegations.

38. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 38 of the Second Amended Counterclaim, and on that basis denies the allegations.

39. Stardock admits that Exhibit 4 to the Second Amended Counterclaim shows a document titled “Addendum No. 3 to License Agreement Between Accolade, Inc. and Paul Reiche III”. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 39 of the Second Amended Counterclaim, and on that basis denies the allegations.

40. Stardock admits that the purported language from Paragraph 1.5 of Addendum No. 3 is set forth in Exhibit 4 to the Second Amended Counterclaim and that the document speaks for itself. Notably, the definition of “Reiche Intellectual Property” in Addendum No. 3 is limited to that which was “owned by Reiche.” Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 40 of the Second Amended Counterclaim, and on that basis denies the allegations.

41 Stardock admits that the purported language from Paragraph 4.1 of Addendum No.

3 is set forth in Exhibit 4 to the Second Amended Counterclaim. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 41 of the Second Amended Counterclaim, and on that basis denies the allegations.

42. Stardock admits that the purported language from Paragraph 7 of Addendum No. 3 is set forth in Exhibit 4 to the Second Amended Counterclaim. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 42 of the Second Amended Counterclaim, and on that basis denies the allegations.

43. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 43 of the Second Amended Counterclaim, and on that basis denies the allegations.

44. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 44 of the Second Amended Counterclaim, and on that basis denies the allegations.

## *Accolade's Successors' Abandonment and Fraudulent Renewal of the Registration for the Star Control Trademark*

45. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 45 of the Second Amended Counterclaim, and on that basis denies the allegations.

46. Stardock admits that on November 25, 2002, Accolade assigned U.S. Trademark Registration No. 2,046,036 for STAR CONTROL to Infogrames, and on March 17, 2003, Infogrames filed with the United States Patent and Trademark Office (“USPTO”) a Declaration of Use and Incontestability along with a specimen of use showing use of the mark of STAR CONTROL. Stardock lacks knowledge or information sufficient to form a belief about the truth of

any and all other allegations asserted in Paragraph 46 of the Second Amended Counterclaim, and on that basis denies the allegations.

47. Stardock admits that Infogrames was renamed Atari. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 47 of the Second Amended Counterclaim, and on that basis denies the allegations.

48. Stardock admits that on September 18, 2007, Atari filed with the USPTO a Declaration of Use in Commerce and Application for Renewal of Registration for U.S. Trademark Registration No. 2,046,036 for STAR CONTROL. Stardock lacks knowledge or information sufficient to form a belief about the truth of the allegation that as part of a valuation of its IP in late 2006, Atari reported that it made no sales of Star Control from at least 2001 through November 2006, and thus, the Star Control trademark was deemed to have no value at that time, and on that basis denies the allegation. Except as expressly admitted herein, Stardock denies any and all other allegations asserted in Paragraph 48 of the Second Amended Counterclaim.

# *Reiche and Ford's Continued Development of the Star Control Universe Through The Ur-Quan Masters and Agreement with Atari to Resume Sale of the Classic Star Control Games*

49. Stardock denies that Reiche and Ford regained all rights to “their games,” including Star Control I and Star Control II. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 49 of the Second Amended Counterclaim, and on that basis denies the allegations.

50. Stardock admits that Defendants' Second Amended Counterclaim define the "Reiche and Ford's Star Control Games" as Star Control, Star Control II, including The Ur-Quan Masters, and Reiche's Preexisting Characters used in Star Control 3, collectively. Stardock denies

1 the accuracy of this definition and further denies any suggestion or assertion that Reiche and Ford  
 2 own any intellectual property in the alleged aforesaid defined Reiche and Ford's Star Control  
 3 Games. Except as expressly admitted herein, Stardock denies any and all other allegations asserted  
 4 in Paragraph 50 of the Second Amended Counterclaim.

5       51.     Stardock denies Reiche's and Ford's suggested possession and ownership of Star  
 6 Control, Star Control II, including The Ur-Quan Masters, and Reiche's Preexisting Characters used  
 7 in Star Control 3. Stardock admits that the Classic Star Control Games have become popular over  
 8 the last couple of decades in the video game community and have acquired a reputation and  
 9 goodwill among the purchasing public. Stardock lacks knowledge or information sufficient to form  
 10 a belief about the truth of any and all other allegations asserted in Paragraph 51 of the Second  
 11 Amended Counterclaim, and on that basis denies the allegations.

12       52.     Stardock admits that Exhibits 6 and 7 to the Second Amended Counterclaim show  
 13 the copyright registration certificates for U.S. Copyright Registration No. PA 2-071-496 and U.S.  
 14 Copyright Registration No. PA 2-107-340 respectively, and which both purport to list Reiche and  
 15 Ford as the claimants. Stardock lacks knowledge or information sufficient to form a belief about  
 16 the truth of any and all other allegations asserted in Paragraph 52 of the Second Amended  
 17 Counterclaim, and on that basis denies the allegations.

18       53.     Stardock lacks knowledge or information sufficient to form a belief about the truth  
 19 of any and all allegations asserted in Paragraph 53 of the Second Amended Counterclaim, and on  
 20 that basis denies the allegations.

21       54.     Stardock lacks knowledge or information sufficient to form a belief about the truth  
 22 of any and all allegations asserted in Paragraph 54 of the Second Amended Counterclaim, and on  
 23 that basis denies the allegations.

55. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 55 of the Second Amended Counterclaim, and on that basis denies the allegations.

56. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 56 of the Second Amended Counterclaim, and on that basis denies the allegations.

57. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 57 of the Second Amended Counterclaim, and on that basis denies the allegations.

58. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all allegations asserted in Paragraph 58 of the Second Amended Counterclaim, and on that basis denies the allegations.

59. Second Amended Counterclaim Stardock lacks knowledge or information sufficient to form a belief about the truth of the allegations asserted in Paragraph 59 of the Second Amended Counterclaim, and on that basis denies the allegations.

60. Stardock lacks knowledge or information sufficient to form a belief about the truth of the allegations asserted in Paragraph 60 of the Second Amended Counterclaim, and on that basis denies the allegations.

61. Stardock lacks knowledge or information sufficient to form a belief about the truth of the allegations asserted in Paragraph 61 of the Second Amended Counterclaim, and on that basis denies the allegations.

62. Stardock lacks knowledge or information sufficient to form a belief about the truth of the allegations asserted in Paragraph 62 of the Second Amended Counterclaim, and on that basis

denies the allegations.

63. Stardock lacks knowledge or information sufficient to form a belief about the truth of the allegations asserted in Paragraph 63 of the Second Amended Counterclaim, and on that basis denies the allegations.

64. Stardock lacks knowledge or information sufficient to form a belief about the truth of the allegations asserted in Paragraph 64 of the Second Amended Counterclaim, and on that basis denies the allegations.

*Stardock Purportedly Buys Star Control Trademark and Star Control 3 Copyright*

65. Stardock admits that in or around 2013, Atari filed for bankruptcy and put its assets up for auction, including the Star Control Franchise. Stardock denies that only Star Control 3 was included in the Star Control Franchise put up for auction. Stardock admits that Atari sold its Star Control Assets to Stardock under a Purchase Agreement dated July 18, 2013 and that the Purchase Agreement defined the Purchased Assets as including the Intellectual Property identified on Schedule 1.01(a), the contracts listed on Schedule 2.01(b), and certain causes of action related to the Intellectual Property. Stardock denies the allegation that any other assets and properties of Atari were specifically excluded from the Purchased Assets.

66. Stardock admits that Exhibit 5 to the Second Amended Counterclaim shows the Purchase Agreement between Atari and Stardock. Stardock lacks knowledge or information sufficient to form a belief about the truth of the allegation that Schedule 1.01(a) and Schedule 2.01(b) to the Purchase Agreement were not attached to the filing with the bankruptcy court, and on that basis denies the allegation. Stardock denies the allegation that any intellectual property or contract rights were not transferred to Stardock.

67. Stardock admits the allegations in Paragraph 67 to the Second Amended

### **Counterclaim.**

68. Stardock denies that the transfer of Atari's Digital Distribution Agreement with GOG Limited and Accolade's License Agreement with Reiche pertained only to Star Control 3. Stardock admits the other allegations in Paragraph 68 of the Second Amended Counterclaim.

69. Stardock denies the allegation that Atari did not purport to sell, nor did it even own or have the right to sell, any rights to the alleged Reiche and Ford's Star Control Games to Stardock, including Reiche's alleged Preexisting Characters used in Star Control 3. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 69 of the Second Amended Counterclaim, and on that basis denies the allegations.

## ***Reiche and Ford Repeatedly Reject Stardock's Requests to License Reiche and Ford's Star Control Games for Use in Stardock's New Game***

70. Stardock admits the allegations in Paragraph 70 of the Second Amended Counterclaim, but asserts that the statements made in the referenced July 22, 2013 email are being presented out of context and were based on Mr. Wardell's understandings at the time and the representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock now believes to be false, misstated, and/or misleading.

71. Stardock admits the allegations in Paragraph 71 of the Second Amended Counterclaim, but asserts that the statements made by Mr. Wardell in the referenced July 23, 2013 email are being presented out of context and were based on Mr. Wardell's understandings at the time and the representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock now believes to be false, misstated, and/or misleading.

72. Stardock admits that on or around July 24, 2013, it announced its acquisition and

1 plan to release a new game inspired by Star Control II. Stardock admits that at that time, the new  
 2 game was expected to be more of a revisit to Star Control II than a continuation. Stardock denies  
 3 the allegation that Mr. Wardell “admitted” that Atari doesn’t own the copyright to Star Control I  
 4 and II and that in order to make a Star Control II HD, a license from Reiche is needed. Stardock  
 5 asserts that any such statements made by Mr. Wardell are being presented out of context and were  
 6 based on Mr. Wardell’s understandings at the time and the representations and warranties made,  
 7 *inter alia*, in the 1988 License Agreement, which Stardock now believes to be false, misstated,  
 8 and/or misleading.

10       73.     Stardock admits that Mr. Wardell contacted Reiche and Ford on July 30, 2013 via  
 11 email and suggested that Reiche and Ford work with Stardock on the development of Star Control:  
 12 Origins, but denies any and all of the other allegations in Paragraph 73 of the Second Amended  
 13 Counterclaim.

15       74.     Stardock lacks knowledge or information sufficient to form a belief about the truth  
 16 of any and all allegations asserted in Paragraph 74 of the Second Amended Counterclaim, and on  
 17 that basis denies the allegations.

18       75.     Stardock lacks knowledge or information sufficient to form a belief about the truth  
 19 of any and all allegations asserted in Paragraph 75 of the Second Amended Counterclaim, and on  
 20 that basis denies the allegations.

22       76.     Stardock admits the allegations in Paragraph 76 of the Second Amended  
 23 Counterclaim.

24       77.     Stardock admits that later that day (September 16, 2013), it acknowledged Reiche’s  
 25 and Ford’s response, and that Stardock offered to sell the Star Control IP it acquired from Atari to  
 26 Defendants. Except as expressly admitted herein, Stardock denies any and all of the other  
 27

1 allegations in Paragraph 77 of the Second Amended Counterclaim.

2 78. Stardock admits the allegations in Paragraph 78 of the Second Amended  
3 Counterclaim.

4 79. Stardock admits the allegations in Paragraph 79 of the Second Amended  
5 Counterclaim.

7 ***Stardock Begins Making False Statements About Reiche and Ford's Involvement***

8 ***in Its New Game, and Asks Reiche and Ford Again Repeatedly to License***  
9 ***Their Star Control Games, Which They Refuse***

10 80. Stardock admits that Mr. Wardell participated in an interview on January 3, 2014.  
11 Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 80  
12 of the Second Amended Counterclaim, and denies that Mr. Wardell made any false or misleading  
13 statements.

14 81. Stardock admits the allegations in Paragraph 81 of the Second Amended  
15 Counterclaim, but asserts that any such statements made by Mr. Wardell are being presented out of  
16 context and were based on Mr. Wardell's understandings at the time and the representations and  
17 warranties made, *inter alia*, in the 1988 License Agreement, which Stardock now believes to be  
18 false, misstated, and/or misleading.

20 82. Stardock admits the allegations in Paragraph 82 of the Second Amended  
21 Counterclaim.

23 83. Stardock admits that, upon information and belief, it alleges in its Second Amended  
24 Complaint that the Atari-GOG Agreement expired on March 22, 2015 and that all subsequent sales  
25 of the Classic Star Control Games on GOG infringed its trademarks and copyrights accordingly.  
26 Stardock admits that it entered into a separate agreement with GOG after the expiration of the Atari-

1 GOG Agreement. Stardock lacks knowledge or information sufficient to form a belief about the  
 2 truth of any and all other allegations asserted in Paragraph 83 of the Second Amended  
 3 Counterclaim, and on that basis denies the allegations.

4       84.     Stardock admits the allegations in Paragraph 84 of the Second Amended  
 5 Counterclaim, but asserts that any such statements made by Mr. Wardell are being presented out of  
 6 context and were based on Mr. Wardell's understandings at the time and the representations and  
 7 warranties made, *inter alia*, in the 1988 License Agreement, which Stardock now believes to be  
 8 false, misstated, and/or misleading.

9       85.     Stardock admits the allegations in Paragraph 85 of the Second Amended  
 10 Counterclaim, but asserts that any such statements made by Mr. Wardell are being presented out of  
 11 context and were based on Mr. Wardell's understandings at the time and the representations and  
 12 warranties made, *inter alia*, in the 1988 License Agreement, which Stardock now believes to be  
 13 false, misstated, and/or misleading.

14       86.     Stardock admits the allegations in Paragraph 86 of the Second Amended  
 15 Counterclaim, but asserts that any such statement made by Mr. Wardell is being presented out of  
 16 context and was based on Mr. Wardell's understandings at the time and the representations and  
 17 warranties made, *inter alia*, in the 1988 License Agreement, which Stardock now believes to be  
 18 false, misstated, and/or misleading.

19       87.     Stardock admits the allegation regarding Mr. Wardell's December 3, 2015 email.  
 20 Stardock admits that Mr. Wardell made the quoted statements with respect to the use of basic and  
 21 unprotectable concepts and ideas from Star Control in Galactic Civilizations. Stardock denies the  
 22 allegation that Stardock had already "borrowed" heavily from Star Control II for the Galactic  
 23 Civilizations game.

1       88. Stardock admits that Mr. Wardell sent an email to Defendants on October 12, 2016,  
 2 which speaks for itself. Defendants have misstated the contents of that email in Paragraph 88 of  
 3 the Second Amended Counterclaim, and further any such statements made by Mr. Wardell in the  
 4 email are being presented out of context and were based on Mr. Wardell's understandings at the  
 5 time and the representations and warranties made, *inter alia*, in the 1988 License Agreement, which  
 6 Stardock now believes to be false, misstated, and/or misleading.  
 7

8       89. Stardock admits that Star Control: Origins and Galactic Civilizations provide  
 9 modification tools that allow users to build and create things in the game. Stardock admits that on  
 10 July 28, 2017, Mr. Wardell asked Reiche and Ford if, in light of the upcoming 25th anniversary of  
 11 Star Control II, they would do "an interview regarding your work on Star Control 1/2, the Ur-Quan  
 12 Masters, past, present and future of your universe." Stardock lacks knowledge or information  
 13 sufficient to form a belief about the truth of the allegation that Reiche and Ford later learned that  
 14 many ships and alien races from the alleged Reiche and Ford's Star Control Games appeared in  
 15 Galactic Civilizations, and on that basis denies the allegations. Based on the information that is  
 16 now available to Stardock, it is Stardock's position that there was no need to seek any permission  
 17 and/or license from Reiche and Ford. Inasmuch as Reiche and Ford allege that they own any valid  
 18 and enforceable intellectual property rights in the Classic Star Control Games, Stardock denies that  
 19 allegation. Except as expressly admitted herein, Stardock denies any and all of the other allegations  
 20 in Paragraph 89 of the Second Amended Counterclaim.  
 21

23       90. Stardock admits the allegations in Paragraph 90 of the Second Amended  
 24 Counterclaim.  
 25

26       91. Except as otherwise denied below, Stardock admits the allegations in Paragraph 91  
 27 of the Second Amended Counterclaim, but asserts that any such statements made by Mr. Wardell  
 28

1 are being presented out of context and were based on Mr. Wardell's understandings at the time and  
 2 the representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock  
 3 now believes to be false, misstated, and/or misleading. Based on the information that is now  
 4 available to Stardock, it is Stardock's position that there was no need to seek such permission and/or  
 5 license from Reiche and Ford. Inasmuch as Reiche and Ford allege that they own any valid and  
 6 enforceable intellectual property rights in the Classic Star Control Games, Stardock denies that  
 7 allegation.

9       92. Except as otherwise denied below, Stardock admits the allegations in Paragraph 92  
 10 of the Second Amended Counterclaim, but asserts that any such statements made by Mr. Wardell  
 11 are being presented out of context and were based on Mr. Wardell's understandings at the time and  
 12 the representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock  
 13 now believes to be false, misstated, and/or misleading. Based on the information that is now  
 14 available to Stardock, it is Stardock's position that there was no need to seek any permission and/or  
 15 license from Reiche and Ford. Inasmuch as Reiche and Ford allege that they own any valid and  
 16 enforceable intellectual property rights in the Classic Star Control Games, Stardock denies that  
 17 allegation.

19       93. Stardock lacks knowledge or information sufficient to form a belief about the truth  
 20 of the allegation that Reiche or Ford own any intellectual property in Star Control I and Star Control  
 21 II, and on that basis denies the allegation. Except as otherwise denied below, Stardock admits the  
 22 other allegations in Paragraph 93 of the Second Amended Counterclaim. Inasmuch as Reiche and  
 23 Ford allege that they own any valid and enforceable intellectual property rights in the Classic Star  
 24 Control Games, Stardock denies that allegation.

26       94. Stardock lacks knowledge or information sufficient to form a belief about the truth

1 of the allegation that the 1988 License Agreement terminated and expired in 2001, and on that basis  
 2 denies the allegation. Stardock admits that on October 4, 2017, it advised Reiche and Ford that it  
 3 had a license to use Reiche's and Ford's alleged intellectual property under the 1988 License  
 4 Agreement. Based on the information that is now available to Stardock, it is Stardock's position  
 5 that there was no need to seek any permission and/or license from Reiche and Ford. Inasmuch as  
 6 Reiche and Ford allege that they own any valid and enforceable intellectual property rights in the  
 7 Classic Star Control Games, Stardock denies that allegation.

9       95. Except as otherwise denied below, Stardock admits the allegations in Paragraph 95  
 10 of the Second Amended Counterclaim. Based on the information that is now available to Stardock,  
 11 it is now Stardock's position that there was no need to seek any permission and/or license from  
 12 Reiche and Ford. Inasmuch as Reiche and Ford allege that they own any valid and enforceable  
 13 intellectual property rights in the Classic Star Control Games, Stardock denies that allegation.  
 14

15       96. Stardock denies that Mr. Wardell has made any admissions via his communications  
 16 with respect to any alleged Reiche and Ford intellectual property alleged in Paragraph 96 of the  
 17 Second Amended Counterclaim. Except as otherwise denied below, Stardock admits the existence  
 18 of the communication as set forth in Paragraph 96 of the Second Amended Counterclaim, but  
 19 asserts that any such statements made by Mr. Wardell are being presented out of context and were  
 20 based on Mr. Wardell's understandings at the time and the representations and warranties made,  
 21 *inter alia*, in the 1988 License Agreement, including Reiche and Ford's representations and  
 22 warranties with respect to the alleged intellectual property they own related to the Classic Star  
 23 Control Games, which Stardock now believes to be false, misstated, and/or misleading. Based on  
 24 the information that is now available to Stardock, it is Stardock's position that there was no need  
 25 to seek any permission and/or license from Reiche and Ford. Inasmuch as Reiche and Ford allege  
 26 to seek any permission and/or license from Reiche and Ford. Inasmuch as Reiche and Ford allege  
 27

1 that they own any valid and enforceable intellectual property rights in the Classic Star Control  
 2 Games, Stardock denies that allegation.

3       97.     Stardock admits the existence of the communication as set forth in Paragraph 97 of  
 4 the Second Amended Counterclaim, but asserts that any such statements made by Mr. Wardell are  
 5 being presented out of context and were based on Mr. Wardell's understandings at the time and the  
 6 representations and warranties made, *inter alia*, in the 1988 License Agreement, which Stardock  
 7 now believes to be false, misstated, and/or misleading. Inasmuch as Reiche and Ford allege that  
 8 they own any valid and enforceable intellectual property rights in the Classic Star Control Games,  
 9 Stardock denies that allegation. Stardock lacks knowledge or information sufficient to form a belief  
 10 about the truth of any and all other allegations asserted in Paragraph 97 of the Second Amended  
 11 Counterclaim, and on that basis denies the allegations.

12       98.     Stardock admits that on October 7, 2017, Reiche and Ford responded and claimed  
 13 that they had received no royalties for many years and therefore the 1988 License Agreement had  
 14 expired. Stardock also admits that Reiche and Ford purported to advise Mr. Wardell that  
 15 Stardock's planned use of "Super Melee" from Star Control II in Star Control: Origins was not  
 16 authorized. Inasmuch as the allegations within Paragraph 98 of the Second Amended Counterclaim  
 17 suggest that Reiche and Ford own any valid and enforceable intellectual property as it pertains to  
 18 the Classic Star Control Games such that Stardock would have been required to seek Reiche and  
 19 Ford's permission and/or license to use the alleged intellectual property, such allegations are  
 20 denied.

21       99.     Stardock admits that it responded later that day, but denies any and all other  
 22 allegations in Paragraph 99 of the Second Amended Counterclaim.

23       100.    Stardock admits that on October 9, 2017, Reiche and Ford announced their plans to

create and develop a new game that would be a sequel to The Ur-Quan Masters to be called “Ghosts of the Precursors” and using the STAR CONTROL mark and THE UR-QUAN MASTERS mark.

## ***Stardock's, Valve's, and GOG's Copyright and Trademark Infringement and Other Unfair Competition***

101. Stardock admits that it has sold the Classic Star Control Games through its own and Valve's website. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 101 of the Second Amended Counterclaim, including the suggestion that Reiche and Ford own any rights (intellectual property rights or otherwise) in and to the Classic Star Control Games such that Stardock would have been required to obtain Reiche's and Ford's permission and/or license with respect to the sale thereof.

102. Stardock admits that the screenshot from Stardock's website depicted in Paragraph 102 of the Second Amended Counterclaim shows links to buy these games through Valve's website, and shows Stardock's lawful use of THE UR-QUAN MASTERS mark. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 102 of the Second Amended Counterclaim, including the suggestion that Reiche and Ford own any rights (intellectual property rights or otherwise) in and to the Classic Star Control Games such that Stardock would have been required to obtain Reiche's and Ford's permission and/or license with respect to the sale thereof.

103. Stardock admits the allegation that it renamed “Star Control 1+2” on GOG’s website to be called “Star Control: The Ur-Quan Masters.” Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 103 of the Second Amended Counterclaim.

104. Stardock admits the allegation that Reiche and Ford sent Valve a notice of infringement and request to remove the Classic Star Control Games and that Stardock sent Valve a

1 counter-notice. Except as expressly admitted herein, Stardock denies any and all other allegations  
 2 in Paragraph 104 of the Second Amended Counterclaim.

3       105. Stardock admits the allegation that it sent GOG a counter-notice and on that basis  
 4 GOG resumed selling the Classic Star Control Games. Except as expressly admitted herein,  
 5 Stardock denies any and all other allegations in Paragraph 105 of the Second Amended  
 6 Counterclaim.

7       106. Stardock denies the allegations in Paragraph 106 of the Second Amended  
 8 Counterclaim.

9       107. Stardock admits the allegations in Paragraph 107 of the Second Amended  
 10 Counterclaim.

11       108. Stardock admits the allegations in Paragraph 108 of the Second Amended  
 12 Counterclaim.

13       109. Stardock admits that in November 2017, it released the first beta of Fleet Battles  
 14 (originally titled “Super Melee”), a limited feature of the Star Control: Origins game. Except as  
 15 expressly admitted herein, Stardock denies any and all other allegations in Paragraph 109 of the  
 16 Second Amended Counterclaim.

17       110. Stardock admits that the Star Control: Origins Fleet Battles beta provides  
 18 modification tools that allow users to build and create things in the game. Except as expressly  
 19 admitted herein, Stardock denies any and all other allegations in Paragraph 110 of the Second  
 20 Counterclaim.

21       111. Stardock denies the allegations in Paragraph 111 of the Second Amended  
 22 Counterclaim.

23       112. Stardock denies the allegations in Paragraph 112 of the Second Amended

1 Counterclaim.

2       113. Stardock admits that on March 21, 2018, Mr. Wardell posted online in The U-Quan  
 3 Masters (“UQM”) Forum the language quoted in Paragraph 113 of the Second Amended  
 4 Counterclaim, which was made in reference to the names of the aliens and not the depiction of the  
 5 aliens with any creative expression that could be considered the same as or substantially similar to  
 6 the aliens in the Classic Star Control Games.  
 7

8       114. Stardock admits that on April 7, 2018, Mr. Wardell stated the language quoted in  
 9 Paragraph 114 of the Second Amended Counterclaim. Stardock denies that such statement in any  
 10 way admits or even suggests that Reiche or Ford are the creators or owners of the characters in Star  
 11 Control II. Stardock made such statement prior to realizing that Reiche and Ford did not actually  
 12 own the alleged copyrights, which has since been confirmed by the U.S. Copyright Office.  
 13

14       115. Stardock admits that Mr. Wardell stated the quoted language in Paragraph 107 of  
 15 the Second Amended Counterclaim on Stardock’s website, which was made in reference to the  
 16 names of the aliens and not the depiction of the aliens with any creative expression that could be  
 17 considered the same as or substantially similar to the aliens in the Classic Star Control Games.  
 18 Stardock denies any allegation that it has copied alien race artwork allegedly owned by Reiche or  
 19 Ford without Reiche’s or Ford’s permission and/or license or that Reiche or Ford are in fact the  
 20 owners of any alleged alien race artwork from Star Control I or Star Control II. Stardock also  
 21 denies that Reiche and Ford have any rights in the Classic Star Control Games that would require  
 22 Stardock to have obtained Reiche’s and/or Ford’s permission and/or license to use material from  
 23 the Classic Star Control Games in connection with Star Control: Origins or its website, marketing  
 24 or otherwise. Except as expressly admitted herein, Stardock denies any and all other allegations in  
 25 Paragraph 115 of the Second Amended Counterclaim.  
 26

1       116. Stardock admits that it conducted an informal survey among potential purchasers  
 2 concerning which alien names to include from the Classic Star Control Games in future Star Control  
 3 games and that Mr. Wardell stated that a number of the alien races that appeared in Star Control II  
 4 would also appear in such future games. Stardock denies any allegation that it has copied alien  
 5 race artwork allegedly owned by Reiche or Ford without Reiche's or Ford's permission and/or  
 6 license or that Reiche or Ford are in fact the owners of any alleged alien race artwork from Star  
 7 Control I or Star Control II. Stardock also denies that Reiche and Ford have any rights in the Classic  
 8 Star Control Games that would require Stardock to have obtained Reiche's and/or Ford's  
 9 permission and/or license to use material from the Classic Star Control Games in connection with  
 10 its Star Control: Origins or website, marketing or otherwise. Except as expressly admitted herein,  
 11 Stardock denies any and all other allegations in Paragraph 116 of the Second Amended  
 12 Counterclaim.

13       117. Stardock admits that in June 2018, Mr. Wardell revealed a video showing a ship  
 14 named the "Earthling Cruiser". Stardock denies any allegation that it has copied space ship artwork  
 15 allegedly owned by Reiche or Ford without Reiche's or Ford's permission and/or license or that  
 16 Reiche or Ford are in fact the owners of any alleged space ship artwork from Star Control I or Star  
 17 Control II. Stardock also specifically denies that the ship named the "Earthling Cruiser" in the  
 18 referenced video is the same or substantially similar in appearance to any ship depicted in the  
 19 Classic Star Control Games. Stardock also denies that Reiche and Ford have any rights in the  
 20 Classic Star Control Games that would require Stardock to have obtained Reiche's and/or Ford's  
 21 permission and/or license to use material from the Classic Star Control Games in connection with  
 22 Star Control: Origins or its website, marketing or otherwise. Except as expressly admitted herein,  
 23 Stardock denies any and all other allegations in Paragraph 117 of the Second Amended  
 24 Counterclaim.

1 Counterclaim.

2       118. Stardock admits that Mr. Wardell has previously stated that Star Control: Origins  
3 will feature alien species from the Classic Star Control Games, such as the alien species called  
4 Arilou, Chenjesu and Melnorme, which was made in reference to the names of the aliens and not  
5 the depiction of the aliens with any creative expression that could be considered the same as or  
6 substantially similar to the aliens in the Classic Star Control Games. Stardock denies any allegation  
7 that it has copied alien race artwork allegedly owned by Reiche or Ford without Reiche's or Ford's  
8 permission and/or license or that Reiche or Ford are in fact the owners of any alleged alien race  
9 artwork from Star Control I or Star Control II. Stardock also denies that Reiche and Ford have any  
10 rights in the Classic Star Control Games that would require Stardock to have obtained Reiche's  
11 and/or Ford's permission and/or license to use material from the Classic Star Control Games in  
12 connection with Star Control: Origins or its website, marketing or otherwise. Except as expressly  
13 admitted herein, Stardock denies any and all other allegations in Paragraph 118 of the Second  
14 Amended Counterclaim.

15       119. Stardock admits that Mr. Wardell has previously stated that the stars in Star Control:  
16 Origins would be named in Reiche's and Ford's honor; however, after Reiche and Ford expressed  
17 dissatisfaction with this concept, the stars were not actually named in Reiche's and Ford's honor in  
18 the publically released version of Star Control: Origins. Stardock denies that Reiche and Ford have  
19 any rights in the Classic Star Control Games that would require Stardock to have obtained Reiche's  
20 and/or Ford's permission and/or license to use material from the Classic Star Control Games in  
21 connection with Star Control: Origins or its website, marketing or otherwise. Except as expressly  
22 admitted herein, Stardock denies any and all other allegations in Paragraph 119 of the Second  
23 Amended Counterclaim.

1       120. Stardock admits that on August 13, 2018, Mr. Wardell stated the language quoted  
 2 in Paragraph 120 of the Second Amended Counterclaim and Stardock's mention of its ownership  
 3 of the Star Control aliens was in reference to the names of the aliens.

4       121. Stardock admits that on August 14, 2018, Mr. Wardell stated the language quoted  
 5 in Paragraph 121 of the Second Amended Counterclaim, as Stardock is owner of all trademark  
 6 rights in the Classic Star Control Games and any and all goodwill associated therewith.

7       122. Stardock admits that in September 2018, Mr. Wardell stated the language quoted in  
 8 Paragraph 122 of the Second Amended Counterclaim, referring to the names of the alien species in  
 9 the Classic Star Control Games. Except as expressly admitted herein, Stardock denies any and all  
 10 other allegations in Paragraph 122 of the Second Amended Counterclaim.

11       123. Stardock admits that it previously released the Star Control: Origins – Arilou Music  
 12 Pack on Valve's website, which was composed of the theme music for the Arilou species and  
 13 accompanying wallpaper image. Except as expressly admitted herein, Stardock denies any and all  
 14 other allegations in Paragraph 123 of the Second Amended Counterclaim.

15       124. Stardock admits that Mr. Wardell previously stated that Star Control: Origins would  
 16 include an alien species called Arilou. Stardock also admits that the images depicted in Paragraph  
 17 124 of the Second Amended Complaint are of the alien species called Arilou from Star Control I  
 18 and II and the wallpaper accompanying the music download from Stardock's Arilou Music Pack.  
 19 Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 124  
 20 of the Second Amended Counterclaim.

21       125. Stardock admits that in its promotion for the Arilou Music Pack on Stardock's  
 22 website the Arilou are described as "a race of green-skinned aliens who admit to having been  
 23 watching the human race for a very long time," and as "'little green men.' Calling themselves the

1 Arilou Lalee'lay, they have apparently been watching humanity for a long time. ... they also seem  
 2 to be almost purposefully mysterious" and that the Arilou are described in Star Control II as "[t]he  
 3 Ariloulaleelay are a mysterious race ... they do make regular, secret visits to your world, and have  
 4 done so for centuries" and "pale, about 1.5 meters tall, and have large, childlike heads with dark,  
 5 soulful eyes. ... The Arilou may have visited Earth often in the past ... ." Stardock denies any  
 6 allegation or suggestion in Paragraph 126 that Stardock's Arilou Music Pack is substantially similar  
 7 to or otherwise, infringes any protectable expression related to the Arilou in Star Control II or other  
 8 alleged rights owned by Reiche and Ford.

10       126. Stardock admits that the images depicted in Paragraph 126 of the Second Amended  
 11 Complaint are of the alien species called Chenjesu from Star Control and the wallpaper  
 12 accompanying the music download from Stardock's Chenjesu Music Pack. Stardock further admits  
 13 that the names of the alien species are the same, given that Stardock is owner of all trademark rights  
 14 in the Classic Star Control Games and any and all goodwill associated therewith. Except as  
 15 expressly admitted herein, Stardock denies any and all other allegations in Paragraph 126 of the  
 16 Second Amended Counterclaim.

18       127. Stardock admits that in its promotion for the Chenjesu Music Pack on Stardock's  
 19 website the Chenjesu are described as "ambulatory crystals themselves, who fed on a unique  
 20 mixture of solar and chemical processes. Peaceful and very intelligent" and living on "a strange  
 21 crystalline world ..." and that the Chenjesu were described in Star Control as "[c]rystalline in  
 22 substance, existing on electric energy," and in Star Control II as having a "silicon-based biology ...  
 23 superior to our old carbon models," having "fantastic intellects," and being "peaceful," and being  
 24 "a photo/chemovore (it derives its nourishment from light and ambient minerals)." Stardock denies  
 25 any allegation or suggestion in Paragraph 127 that Stardock's Chenjesu Music Pack is substantially  
 26 any allegation or suggestion in Paragraph 127 that Stardock's Chenjesu Music Pack is substantially  
 27

1 similar to or otherwise, infringes any protectable expression related to the Chenjesu in Star Control  
 2 or other alleged rights owned by Reiche and Ford.

3       128. Stardock admits that it has recently began selling Star Control: Origins via Valve's  
 4 and GOG's websites. Stardock also admits that it has previously referred to Star Control: Origins  
 5 as a "reboot" of Star Control II. Except as expressly admitted herein, Stardock denies the  
 6 allegations in Paragraph 128 to the extent they pertain to Stardock. Stardock does not have  
 7 sufficient information to admit or deny the remaining allegations in Paragraph 128 of the Second  
 8 Amended Counterclaim and denies them on that basis.

9       129. Stardock admits that in Star Control: Origins, players start from earth and travel to  
 10 and explore new stars and planets and encounter various alien species via hyperspace travel, which  
 11 is unlike Star Control II where the game starts out in an entirely different solar system and the  
 12 player must travel back to earth. Except as expressly admitted herein, Stardock denies any and all  
 13 other allegations in Paragraph 129 of the Second Amended Counterclaim.

14       130. Stardock denies the allegations in Paragraph 130 of the Second Amended  
 15 Complaint.

16       131. Stardock denies the allegations in Paragraph 131 of the Second Amended  
 17 Complaint.

18       132. Stardock admits that in Star Control: Origins the "Star Control" refers to an  
 19 international organization set up to learn the fate of the Lexites, which is an original alien species  
 20 featured in the game. Stardock denies that any released version of Star Control: Origins ever  
 21 referred to the starbase commander as "Commander Hayes". Except as expressly admitted herein,  
 22 Stardock denies any and all other allegations in Paragraph 132 of the Second Amended  
 23 Counterclaim.

133. Stardock admits that Star Control: Origins includes “Precursors” described as an ancient, advanced alien race that explored the universe 250,000 years ago but then vanished. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 133 of the Second Amended Counterclaim.

134. Stardock denies the allegations in Paragraph 134 of the Second Amended Counterclaim.

135. Stardock admits that some of the planet types in Star Control: Origins have the same names as the planet types in the Classic Star Control Games, such as “Green”, “Dust” and “Organic”. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 135 of the Second Amended Counterclaim.

136. Stardock admits that players in Star Control: Origins search for TZO (Thorne-Zytkow objects) crystals and other scientific mineral elements and compounds, including iron, gold, hydrogen, anti-matter, uranium, etc. (which are often found in other video games), and earn or collect resource units to exchange for certain resources or items. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 136 of the Second Amended Counterclaim.

137. Stardock denies the allegations in Paragraph 137 of the Second Amended Counterclaim.

138. Stardock admits that the images depicted in Paragraph 138 of the Second Amended Counterclaim appear to be images taken from the Classic Star Control Games and Stardock's website, as indicated. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 138 of the Second Amended Counterclaim.

139. Stardock admits that the parties were engaged in settlement discussions from

1 October-December 2017. Stardock denies that it was the party that broke off those settlement  
 2 negotiations. Stardock admits that it filed suit against Reiche and Ford in mid-December. Stardock  
 3 admits that it owns U.S. Copyright Registration No. PA 799-000. Except as expressly admitted  
 4 herein, Stardock denies any and all other allegations in Paragraph 139 of the Second Amended  
 5 Counterclaim.

7 ***Stardock's Fraudulent Claims to Trademark Rights to Prevent Reiche and Ford from Making  
 8 Their Own Derivative Work***

9 140. Stardock denies the allegations in Paragraph 140 of the Second Amended  
 10 Counterclaim.

11 141. Stardock admits that it contends that Stardock has used the UR-QUAN MASTER  
 12 mark since at least August 10, 2013, and asserts that any known period of non-use of the mark is  
 13 excusable and acceptable non-use with the intent to resume use of the mark. Consequently,  
 14 Stardock denies Defendants' allegation that the above-referenced contention is false. Stardock  
 15 admits that it submitted specimens of use to the USPTO in connection with THE UR-QUAN  
 16 MASTERS Mark, the content for which speaks for itself. Stardock admits the other allegations in  
 17 Paragraph 141 of the Second Amended Counterclaim.

19 142. Stardock admits that it claims that THE UR-QUAN MASTERS mark (in as much  
 20 as the reference to "this mark" means THE UR-QUAN MASTERS mark) was used as a source  
 21 identifier by Accolade and then Atari and that Stardock acquired the rights in and to THE UR-  
 22 QUAN MASTERS mark from Atari and has since continued to use the mark in its marketing and  
 23 sales of the Classic Star Control Games until recently. Stardock also admits that it claims that  
 24 Defendants' use of THE UR-QUAN MASTERS mark infringes its rights in and to the mark.  
 25 Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 142  
 26

1 of the Second Amended Counterclaim.

2 143. Stardock admits the allegations in Paragraph 143 of the Second Amended  
3 Counterclaim.

4 144. Stardock admits that it claims that the marks asserted in Paragraph 120 in the Second  
5 Amended Counterclaim were used as source identifiers by Accolade and then Atari and that  
6 Stardock acquired the rights in and to such marks from Atari and has since continued to use the  
7 marks in its marketing and sales of the Classic Star Control Games until recently. Except as  
8 expressly admitted herein, Stardock denies any and all other allegations in Paragraph 144 of the  
9 Second Amended Counterclaim.

10 145. Stardock denies the allegations in Paragraph 145 of the Second Amended  
11 Counterclaim.

12 146. Stardock admits that it has filed U.S. trademark applications for the marks asserted  
13 in Paragraph 143 in the Second Amended Counterclaim on an intent to use basis. Except as  
14 expressly admitted herein, Stardock denies any and all other allegations in Paragraph 146 of the  
15 Second Amended Counterclaim.

16 147. Stardock admits the allegations in Paragraph 147 of the Second Amended  
17 Counterclaim.

18 148. Stardock admits that in its Notice of Opposition against the application for the mark  
19 GHOSTS OF THE PRECURSORS, Stardock alleges that has acquired from Atari all trademark  
20 rights in the “product names/titles, sub-names/titles, cover art, characters (e.g., aliens), alien race  
21 names, character names, spaceship names and spaceship designs” from the Classic Star Control  
22 Games, including but not limited to the mark PRECURSORS. Except as expressly admitted herein,  
23 Stardock denies any and all other allegations in Paragraph 148 of the Second Amended  
24 Counterclaim.

### **Counterclaim.**

149. Stardock admits that in its Notice of Opposition against the application for the mark GHOSTS OF THE PRECURSORS, Stardock alleges that the mark PRECURSORS has been in use in commerce through sales of the games by Accolade and then Atari and subsequently, Stardock. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 149 of the Second Amended Counterclaim.

150. Stardock admits that in its Notice of Opposition against the application for the mark GHOSTS OF THE PRECURSORS, Stardock alleges that Reiche's and Ford's use of the mark GHOSTS OF THE PRECURSORS would be confusingly similar to Stardock's purported mark(s), create a likelihood of confusion, and damage Stardock. Stardock lacks knowledge or information sufficient to form a belief about the truth of any and all other allegations asserted in Paragraph 150 of the Second Amended Counterclaim, and on that basis denies the allegations.

151. Stardock admits the allegations that on November 27, 2017, it filed U.S. Trademark Application Serial No. 87/697,919, and on February 22, 2018, it filed U.S. Trademark Application Serial No. 87/807,839, both for the mark STAR CONTROL. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 151 of the Second Amended Counterclaim.

## ***GOG Breaches the Ford-GOG Agreement***

152. Stardock admits that it alleges that the Atari-GOG Agreement expired on March 22, 2015, and that all subsequent sales of the Classic Star Control Games on GOG infringed its alleged rights. Except as expressly admitted herein, Stardock denies any and all other allegations in Paragraph 152 of the Second Amended Counterclaim.

153. Stardock denies the allegations in Paragraph 153 of the Second Amended

1 Counterclaim.

2       154. Stardock admits the allegations in Paragraph 154 of the Second Amended  
3 Counterclaim.

4       155. Stardock lacks knowledge or information sufficient to form a belief about the truth  
5 of any and all allegations asserted in Paragraph 155 of the Second Amended Counterclaim, and on  
6 that basis denies the allegations.

7       156. Stardock lacks knowledge or information sufficient to form a belief about the truth  
8 of any and all allegations asserted in Paragraph 156 of the Second Amended Counterclaim, and on  
9 that basis denies the allegations.

10       157. Stardock lacks knowledge or information sufficient to form a belief about the truth  
11 of any and all allegations asserted in Paragraph 157 of the Second Amended Counterclaim, and on  
12 that basis denies the allegations.

13       158. Stardock lacks knowledge or information sufficient to form a belief about the truth  
14 of any and all allegations asserted in Paragraph 158 of the Second Amended Counterclaim, and on  
15 that basis denies the allegations.

16       159. Stardock lacks knowledge or information sufficient to form a belief about the truth  
17 of any and all allegations asserted in Paragraph 159 of the Second Amended Counterclaim, and on  
18 that basis denies the allegations.

***Reiche and Ford's Notices & Valve's & GOG's Continued Intentional & Willful Infringement***

20       160. Stardock lacks knowledge or information sufficient to form a belief about the truth  
21 of any and all allegations asserted in Paragraph 160 of the Second Amended Counterclaim, and on  
22 that basis denies the allegations.

23       161. Stardock denies any allegation that Star Control: Origins infringes Reiche's and

Ford's alleged copyrights or that Reiche and Ford have any rights in the Classic Star Control Games that would require Stardock to have obtained Reiche's and/or Ford's permission and/or license to use material from the Classic Star Control Games in connection with Star Control: Origins or its website, marketing or otherwise. Stardock lacks knowledge or information sufficient to form a belief about the truth of any other allegation asserted in Paragraph 161 of the Second Amended Counterclaim, and on that basis denies the allegations.

162. Stardock lacks knowledge or information sufficient to form a belief about the truth  
of any and all allegations asserted in Paragraph 162 of the Second Amended Counterclaim, and on  
that basis denies the allegations.

## **FIRST CAUSE OF ACTION**

**(Copyright Infringement – 17 U.S.C. § 501 – Against All Counter-Defendants)**

163. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 162 above as if set forth in full.

164. Stardock denies the allegations in Paragraph 164 to the extent they pertain to  
Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations  
in Paragraph 164 of the Second Amended Counterclaim and denies them on that basis.

165. Stardock denies the allegations in Paragraph 165 to the extent they pertain to  
Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations  
in Paragraph 165 of the Second Amended Counterclaim and denies them on that basis.

166. Stardock denies the allegations in Paragraph 166 to the extent they pertain to  
Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations  
in Paragraph 166 of the Second Amended Counterclaim and denies them on that basis.

167. Stardock denies the allegations in Paragraph 167 to the extent they pertain to

1 Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations  
2 in Paragraph 167 of the Second Amended Counterclaim and denies them on that basis.  
3

4 168. Stardock denies the allegations in Paragraph 168 to the extent they pertain to  
5 Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations  
6 in Paragraph 168 of the Second Amended Counterclaim and denies them on that basis.

7 **SECOND CAUSE OF ACTION**

8 **(Declaratory Judgment re: Ownership of Copyrights – Against Stardock)**

9 169. Stardock realleges and incorporates herein by reference its responses to Paragraphs  
10 1 through 168 above as if set forth in full.

11 170. Stardock denies the allegations in Paragraph 170 of the Second Amended  
12 Counterclaim.  
13

14 171. Stardock denies the allegations in Paragraph 171 of the Second Amended  
15 Counterclaim.

16 172. Stardock denies the allegations in Paragraph 172 of the Second Amended  
17 Counterclaim.

18 **THIRD CAUSE OF ACTION**

19 **(Unfair Competition – Lanham Act § 43(a) (15 U.S.C. § 1125(a)) – Against Stardock)**

20 173. Stardock realleges and incorporates herein by reference its responses to Paragraphs  
21 1 through 172 above as if set forth in full.  
22

23 174. Stardock denies the allegations in Paragraph 174 of the Second Amended  
24 Counterclaim.

25 175. Stardock denies the allegations in Paragraph 175 of the Second Amended  
26 Counterclaim.  
27

176. Stardock denies the allegations in Paragraph 176 of the Second Amended Counterclaim.

177. Stardock denies the allegations in Paragraph 177 of the Second Amended Counterclaim.

178. Stardock denies the allegations in Paragraph 178 of the Second Amended Counterclaim.

## **FOURTH CAUSE OF ACTION**

(Common Law Trademark Infringement and Unfair Competition – Against Stardock)

179. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 178 above as if set forth in full.

180. Stardock denies the allegations in Paragraph 180 of the Second Amended Counterclaim.

181. Stardock denies the allegations in Paragraph 181 of the Second Amended Counterclaim.

182. Stardock denies the allegations in Paragraph 182 of the Second Amended Counterclaim.

183. Stardock denies the allegations in Paragraph 183 of the Second Amended Counterclaim.

184. Stardock denies the allegations in Paragraph 184 of the Second Amended  
Complaint.

185. Stardock denies the allegations in Paragraph 185 of the Second Amended

<sup>186</sup> See 1.1.1 above; see also section 1.1.1 above.

### **Counterclaim.**

## **FIFTH CAUSE OF ACTION**

**(Unfair Competition (Cal. Bus. & Prof. Code § 17200 *et seq.*) – Against Stardock)**

187. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 186 above as if set forth in full.

188. Stardock denies the allegations in Paragraph 188 of the Second Amended Counterclaim.

189. Stardock denies the allegations in Paragraph 189 of the Second Amended Counterclaim.

190. Stardock denies the allegations in Paragraph 190 of the Second Amended Counterclaim.

## SIXTH CAUSE OF ACTION

**(Cancellation of U.S. Trademark Registration No. 2,046,036 – Against Stardock)**

191. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 190 above as if set forth in full.

192. Stardock denies the allegations in Paragraph 192 of the Second Amended Counterclaim.

## **SEVENTH CAUSE OF ACTION**

(Conversion = Against Stardock)

193. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 192 above as if set forth in full.

194. Stardock denies the allegations in Paragraph 194 of the Second Amended Counterclaim.

195. Stardock denies the allegations in Paragraph 195 of the Second Amended Counterclaim.

196. Stardock denies the allegations in Paragraph 196 of the Second Amended Counterclaim.

197. Stardock denies the allegations in Paragraph 197 of the Second Amended Counterclaim.

## **EIGHTH CAUSE OF ACTION**

**(Declaratory Judgment re: Trademark Rights – Against Stardock)**

198. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 197 above as if set forth in full.

199. Stardock denies the allegations in Paragraph 199 of the Second Amended Counterclaim.

200. Stardock denies the allegations in Paragraph 200 of the Second Amended Counterclaim.

201. Stardock denies the allegations in Paragraph 201 of the Second Amended Counterclaim.

202. Stardock denies the allegations in Paragraph 202 of the Second Amended Counterclaim.

203. Stardock denies the allegations in Paragraph 203 of the Second Amended

204. Stardock denies the allegations in Paragraph 204 of the Second Amended

**NINTH CAUSE OF ACTION**

**(Fraud – Against Stardock and GOG)**

205. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 204 above as if set forth in full.

206. Stardock denies the allegations in Paragraph 206 to the extent they pertain to Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations in Paragraph 206 of the Second Amended Counterclaim and denies them on that basis.

207. Stardock denies the allegations in Paragraph 207 to the extent they pertain to Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations in Paragraph 207 of the Second Amended Counterclaim and denies them on that basis.

208. Stardock denies the allegations in Paragraph 208 to the extent they pertain to Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations in Paragraph 208 of the Second Amended Counterclaim and denies them on that basis.

209. Stardock denies the allegations in Paragraph 209 to the extent they pertain to Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations in Paragraph 209 and denies them on that basis.

210. Stardock denies the allegations in Paragraph 210 to the extent they pertain to Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations in Paragraph 210 of the Second Amended Counterclaim and denies them on that basis.

211. Stardock denies the allegations in Paragraph 211 to the extent they pertain to Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations in Paragraph 211 of the Second Amended Counterclaim and denies them on that basis.

212. Stardock denies the allegations in Paragraph 212 to the extent they pertain to

Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations in Paragraph 212 of the Second Amended Counterclaim and denies them on that basis.

213. Stardock denies the allegations in Paragraph 213 to the extent they pertain to  
Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations  
in Paragraph 213 of the Second Amended Counterclaim and denies them on that basis.

214. Stardock denies the allegations in Paragraph 214 to the extent they pertain to  
Stardock. Stardock does not have sufficient information to admit or deny the remaining allegations  
in Paragraph 214 of the Second Amended Counterclaim and denies them on that basis.

## **TENTH CAUSE OF ACTION**

#### **(Breach of Contract – Against GOG)**

215. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 214 above as if set forth in full.

216. This alleged claim for relief is not asserted against Stardock, and therefore no response is required from Stardock. To the extent a response is required, Stardock does not have sufficient information to admit or deny the allegations in Paragraph 216 of the Second Amended Counterclaim and denies them on that basis.

217. This alleged claim for relief is not asserted against Stardock, and therefore no response is required from Stardock. To the extent a response is required, Stardock does not have sufficient information to admit or deny the allegations in Paragraph 217 of the Second Amended Counterclaim and denies them on that basis.

218. This alleged claim for relief is not asserted against Stardock, and therefore no response is required from Stardock. To the extent a response is required, Stardock does not have

sufficient information to admit or deny the allegations in Paragraph 218 of the Second Amended Counterclaim and denies them on that basis.

219. This alleged claim for relief is not asserted against Stardock, and therefore no response is required from Stardock. To the extent a response is required, Stardock does not have sufficient information to admit or deny the allegations in Paragraph 219 of the Second Amended Counterclaim and denies them on that basis.

## **ELEVENTH CAUSE OF ACTION**

(Contributory Copyright Infringement – Against Valve and GOG)

220. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 219 above as if set forth in full.

221. This alleged claim for relief is not asserted against Stardock, and therefore no response is required from Stardock. To the extent a response is required, Stardock does not have sufficient information to admit or deny the allegations in Paragraph 221 of the Second Amended Counterclaim and denies them on that basis.

222. This alleged claim for relief is not asserted against Stardock, and therefore no response is required from Stardock. To the extent a response is required, Stardock does not have sufficient information to admit or deny the allegations in Paragraph 222 of the Second Amended Counterclaim and denies them on that basis.

223. This alleged claim for relief is not asserted against Stardock, and therefore no response is required from Stardock. To the extent a response is required, Stardock does not have sufficient information to admit or deny the allegations in Paragraph 223 of the Second Amended Counterclaim and denies them on that basis.

224. This alleged claim for relief is not asserted against Stardock, and therefore no response is required from Stardock. To the extent a response is required, Stardock does not have sufficient information to admit or deny the allegations in Paragraph 224 of the Second Amended Counterclaim and denies them on that basis.

225. This alleged claim for relief is not asserted against Stardock, and therefore no response is required from Stardock. To the extent a response is required, Stardock does not have sufficient information to admit or deny the allegations in Paragraph 225 of the Second Amended Counterclaim and denies them on that basis.

226. This alleged claim for relief is not asserted against Stardock, and therefore no response is required from Stardock. To the extent a response is required, Stardock does not have sufficient information to admit or deny the allegations in Paragraph 226 of the Second Amended Counterclaim and denies them on that basis.

## **TWELFTH CAUSE OF ACTION**

**(Vicarious Copyright Infringement – Against Valve and GOG)**

227. Stardock realleges and incorporates herein by reference its responses to Paragraphs 1 through 226 above as if set forth in full.

228. This alleged claim for relief is not asserted against Stardock, and therefore no response is required from Stardock. To the extent a response is required, Stardock does not have sufficient information to admit or deny the allegations in Paragraph 228 of the Second Amended Counterclaim and denies them on that basis.

229. This alleged claim for relief is not asserted against Stardock, and therefore no response is required from Stardock. To the extent a response is required, Stardock does not have

1 sufficient information to admit or deny the allegations in Paragraph 229 of the Second Amended  
2 Counterclaim and denies them on that basis.

3       230. This alleged claim for relief is not asserted against Stardock, and therefore no  
4 response is required from Stardock. To the extent a response is required, Stardock does not have  
5 sufficient information to admit or deny the allegations in Paragraph 230 of the Second Amended  
6 Counterclaim and denies them on that basis.  
7

8       231. This alleged claim for relief is not asserted against Stardock, and therefore no  
9 response is required from Stardock. To the extent a response is required, Stardock does not have  
10 sufficient information to admit or deny the allegations in Paragraph 231 of the Second Amended  
11 Counterclaim and denies them on that basis.  
12

13       232. This alleged claim for relief is not asserted against Stardock, and therefore no  
14 response is required from Stardock. To the extent a response is required, Stardock does not have  
15 sufficient information to admit or deny the allegations in Paragraph 232 of the Second Amended  
16 Counterclaim and denies them on that basis.  
17

18       233. This alleged claim for relief is not asserted against Stardock, and therefore no  
19 response is required from Stardock. To the extent a response is required, Stardock does not have  
20 sufficient information to admit or deny the allegations in Paragraph 233 of the Second Amended  
21 Counterclaim and denies them on that basis.  
22

23       234. This alleged claim for relief is not asserted against Stardock, and therefore no  
24 response is required from Stardock. To the extent a response is required, Stardock does not have  
25 sufficient information to admit or deny the allegations in Paragraph 234 of the Second Amended  
26 Counterclaim and denies them on that basis.  
27  
28

235. This alleged claim for relief is not asserted against Stardock, and therefore no response is required from Stardock. To the extent a response is required, Stardock does not have sufficient information to admit or deny the allegations in Paragraph 235 of the Second Amended Counterclaim and denies them on that basis.

236. This alleged claim for relief is not asserted against Stardock, and therefore no response is required from Stardock. To the extent a response is required, Stardock does not have sufficient information to admit or deny the allegations in Paragraph 236 of the Second Amended Counterclaim and denies them on that basis.

## **RESPONSE TO PRAYER FOR RELIEF**

To the extent that this section requires a response, Stardock denies that Defendants are entitled to any relief whatsoever from any of the claims alleged in their purported Second Amended Counterclaim, including any of the relief alleged and listed in the Second Amended Counterclaim's Prayer for Relief.

## GENERAL DENIAL

Stardock further denies each and every allegation in the Second Amended Counterclaim that is not specifically admitted, denied, or otherwise responded to in this Answer.

## AFFIRMATIVE DEFENSES

## FIRST AFFIRMATIVE DEFENSE

Defendants fail to state a claim upon which relief may be granted.

## SECOND AFFIRMATIVE DEFENSE

Defendants' claims are barred by the doctrines of estoppel, waiver and/or laches.

### THIRD AFFIRMATIVE DEFENSE

Defendants are not entitled to injunctive relief because, among other things, there is no risk of irreparable harm and money damages would be adequate.

## **FOURTH AFFIRMATIVE DEFENSE**

One or more of Defendants' claims are barred by preemption.

## **FIFTH AFFIRMATIVE DEFENSE**

Defendants lack standing to bring one or more of their causes of action.

## SIXTH AFFIRMATIVE DEFENSE

Defendants' copyright claims are barred and their claimed works are not entitled to copyright protection because their copyrights and/or copyright registrations are invalid and/or unenforceable.

## **SEVENTH AFFIRMATIVE DEFENSE**

Defendants' copyright claims are barred because they are not the rightful owners of the alleged copyrights.

## **EIGHTH AFFIRMATIVE DEFENSE**

Defendants' copyright claims are barred because the works embodied in the relevant copyright registrations are not copyrightable.

## NINTH AFFIRMATIVE DEFENSE

Defendants' copyright claims are barred because Defendants' copyright applications and/or registrations are invalid and/or unenforceable based on Defendants' misrepresentations to the U.S. Copyright Office.

## **TENTH AFFIRMATIVE DEFENSE**

Defendants' copyright claims are barred because any alleged infringement was innocent and lacked intent.

## **ELEVENTH AFFIRMATIVE DEFENSE**

Defendants' trademark claims are limited because any alleged infringement was innocent and lacked intent.

## **TWELFTH AFFIRMATIVE DEFENSE**

Defendants' claims are barred because they are based on intellectual property rights that Defendants do not own.

## **THIRTEENTH AFFIRMATIVE DEFENSE**

Defendants' trademark claims are barred because the alleged infringing use was not as a source identifier.

## **FOURTEENTH AFFIRMATIVE DEFENSE**

Defendants' claims are barred, in whole or in part, because Stardock had a license to use the claimed copyrights and/or trademark rights.

## **FIFTEENTH AFFIRMATIVE DEFENSE**

Defendants' claims are barred, in whole or in part, in that Defendants authorized, consented to, and/or acquiesced in Stardock's alleged actions.

## SIXTEENTH AFFIRMATIVE DEFENSE

Defendants' alleged copyright claims are barred under 17 U.S.C. § 411 and this Court lacks subject-matter jurisdiction over such claims in that Defendants failed to file for and/or obtain a copyright registrations for at least some of the claimed copyrights before filing the Second Amended Counterclaim.

## **SEVENTEENTH AFFIRMATIVE DEFENSE**

Defendants' remedies for its copyright claims are limited under 17 U.S.C. § 412 in that it failed to obtain a copyright registration within three months after the first publication of the work.

## **EIGHTEENTH AFFIRMATIVE DEFENSE**

Defendants' claims are barred by the doctrine of fair use.

## **NINETEENTH AFFIRMATIVE DEFENSE**

Defendants' copyright claims are barred by the merger doctrine, and therefore Defendants cannot establish ownership of any valid and enforceable copyrights and infringement of any such alleged copyrights.

1                   **TWENTIETH AFFIRMATIVE DEFENSE**

2                   Defendants' copyright claims are barred by scènes à faire, and therefore Defendants cannot  
3 establish ownership of any valid and enforceable copyrights and infringement of any such alleged  
4 copyrights.

5                   **TWENTY FIRST AFFIRMATIVE DEFENSE**

6                   Defendants' copyright claims are barred by de minimis use.

7                   **TWENTY SECOND AFFIRMATIVE DEFENSE**

8                   Defendants fail to state their fraud claim with particularity, as required by Rule 9(b) of the  
9 Federal Rules of Civil Procedure.

10                  **TWENTY THIRD AFFIRMATIVE DEFENSE**

11                  Defendants' claims are time barred and due to be dismissed.

12                  **TWENTY FOURTH AFFIRMATIVE DEFENSE**

13                  Defendants' declaratory judgment re: trademark rights claim is barred because they are not  
14 the rightful owners of the alleged trademarks.

15                  **TWENTY FIFTH AFFIRMATIVE DEFENSE**

16                  Defendants' declaratory judgment re: trademark rights claim is barred because Plaintiff has  
17 prior rights in and to the alleged trademarks.

18                  **TWENTY SIXTH AFFIRMATIVE DEFENSE**

19                  Defendants' claims are barred, in whole or in part, by the doctrine of unclean hands.

20                  **TWENTY SEVENTH AFFIRMATIVE DEFENSE**

21                  Defendants' claims are barred, in whole or in part, by the statute of limitations.

22                  **TWENTY EIGHTH AFFIRMATIVE DEFENSE**

23                  Defendants' claims are barred because Plaintiff has no contractual obligations to  
24 Defendants.

## **ADDITIONAL AFFIRMATIVE DEFENSES**

Stardock reserves the right to supplement its affirmative defenses as discovery progresses and additional information becomes available.

**JURY DEMAND**

Stardock demands a trial by jury on all issues so triable.

Dated: October 29, 2018

Respectfully submitted,

NIXON PEABODY LLP

By: /s/ Robert A. Weikert

Robert A. Weikert (Bar No. 121146)  
[rweikert@nixonpeabody.com](mailto:rweikert@nixonpeabody.com)  
Dawn N. Valentine (Bar No. 206486)  
[dvalentine@nixonpeabody.com](mailto:dvalentine@nixonpeabody.com)

NIXON PEABODY LLP  
One Embarcadero Center  
San Francisco, California 94111-3600  
Tel: (415) 984-8200  
Fax: (415) 984-8300

David L. May (appearance *pro hac vice*)  
[dmay@nixonpeabody.com](mailto:dmay@nixonpeabody.com)  
Jennette E. Wiser (appearance *pro hac vice*)  
[jwiser@nixonpeabody.com](mailto:jwiser@nixonpeabody.com)  
NIXON PEABODY LLP  
799 9th Street NW  
Washington, DC 20001-4501  
Tel: (202) 585-8000  
Fax: (202) 585-8080

Jason T. Kunze (appearance *pro hac vice*)  
[jkunze@nixonpeabody.com](mailto:jkunze@nixonpeabody.com)  
NIXON PEABODY LLP  
70 West Madison Street, 35<sup>th</sup> Floor  
Chicago, IL 60602  
Tel: (312) 977-4400  
Fax: (312) 977-4405

*Attorneys for Stardock Systems, Inc.*